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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO
(UNLIMITED JURISDICTION)

12 **CATHERINE MOLNAR and**
13 **PATRICIA SHEPARD,**

14 Plaintiffs,

15 v.

16 **S & Y ASSET MANAGEMENT LLC, a**
17 **Delaware corporation; STONE &**
18 **YOUNGBERG, LLC, a California**
19 **corporation; JOSEPH PIAZZA; TOM**
20 **LOCKARD; and DOES ONE through**
21 **TWENTY, inclusive,**

22 Defendants.

) Case No. CGC-07-467639

) **PLAINTIFFS' MEMORANDUM IN**
) **OPPOSITION TO DEFENDANTS'**
) **DEMURRER TO COMPLAINT**

) Date: February 11, 2008
) Time: 9:30 a.m.
) Dept.: 301

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO
(UNLIMITED JURISDICTION)

CATHERINE MOLNAR and
PATRICIA SHEPARD,

Plaintiffs,

v.

S & Y ASSET MANAGEMENT LLC, a
Delaware corporation; STONE &
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Case No. CGC-07-467639

PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
DEMURRER TO COMPLAINT

Date: February 11, 2008
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PRELIMINARY STATEMENT

On September 27, 2007, Plaintiffs filed their Complaint herein, alleging several claims relating to their wrongful termination of employment by Defendants on October 7, 2005. On January 17, 2008, Defendants filed their Demurrer to Plaintiffs' Fifth Cause of Action (Complaint, paragraphs 46-50) alleging a violation of Cal. Lab. Code Section 970, which prohibits employers from fraudulently inducing an employee to move his or her residence by knowingly false representations. Defendants claim that this Cause of Action is untimely,

1 because, they assert, "Claims under Section 970 are subject to the one-year statute of limitations
 2 set forth in California Code of Civil Procedure Section 340(a) for liability based on statute."
 3 (emphasis in original) [Defendants' Memorandum at 2:12-14]. Defendants cite only one
 4 California case from 1984 in support of this proposition. Defendants further claim that the
 5 applicable statute of limitations for the Section 970 claim was not tolled because of Plaintiffs'
 6 pursuit of discrimination claims with the Equal Employment Opportunity Commission, but cite
 7 no State law to support that contention. [Id at 2:23-25].

8 Defendants fail to point out to the Court that Cal. Code Civ. Pro. Section 340(a) was
 9 amended in 2002, to enlarge the applicable statute of limitations to a minimum of 2 years.
 10 Further, Defendants fail to analyze applicable State law regarding equitable tolling based on
 11 Plaintiffs' pursuit of Federal administrative remedies. As we demonstrate below, Defendants'
 12 Demurrer is without merit and should be overruled.

13 ARGUMENT

14 **I. Under Defendants' Own Argument, the Applicable Statute of** 15 **Limitations for Plaintiffs' Section 970 Claim, as a "Liability** 16 **Based on Statute," is Three Years, So The Complaint Was** **Timely Filed.**

17 Defendants contend that Plaintiffs' Section 970 claim is governed by the statute of
 18 limitations for "liabilities based on statute," but the limitations period for such a claim is plainly
 19 3 years, so the action is timely. Cal. Code Civ. Pro. Section 338(a). Analysis of case law under
 20 Section 970 shows the applicable statute of limitations is no less than 2 years, so the action is
 21 timely however it is characterized.

22 California courts have characterized claims under Lab. Code Section 970 as analogous to
 23 common law claims for fraudulent inducement of a contract of employment, or the tort of deceit.
 24 For example, in Lazar v. Superior Court, 12 Cal. 4th 631, 638-39, 645 (1996) the Supreme Court
 25 discussed Section 970 as an expansion of the common law claim for fraudulent inducement of a
 26 contract of employment. Similarly, the Supreme Court characterized a Section 970 claim as
 27 based on to the tort of deceit in Collins v. Rocha, 7 Cal. 3d 232, 239-40 (1972).

1 The Courts of Appeal have also variously characterized a Section 970 claim as based on
 2 the tort of deceit, as fraud, or simply as a "statutory tort." Tyco Industries Inc. v. Superior Court,
 3 164 Cal. App. 3d 148, 156 (1985) (characterizing as "knowingly false representation"); Seubert
 4 v. McKesson Corp., 223 Cal. App. 3d 1514, 1522 (1990) (characterizing as similar to a claim of
 5 fraud); Finch v. Brenda Raceway Corp., 22 Cal. App. 4th 547, 553-554 (1994) (characterizing as
 6 "intentional misrepresentation"); Burden v. County of Santa Clara, 81 Cal. App. 4th 244, 252
 7 (2000) ("Labor Code Section 970 creates a statutory tort cause of action").

8 In sum, if Plaintiffs' Labor Code Section 970 claim is considered one for fraud or
 9 intentional misrepresentations, it is governed by the three-year statute of limitations contained in
 10 Cal. Code Civ. Pro. Section 338(d). If it is considered a tort, it would be governed by the general
 11 tort statute of limitations for personal injuries, which is now two years. Cal. Code Civ. Pro.
 12 Section 335.1. Accordingly, the shortest applicable period of limitations for Plaintiffs' claim is
 13 the two-year statute, so the Complaint was timely filed. Barton v. New United Motor Mfg. Co.,
 14 43 Cal. App. 4th 1200, 1209 (1996) (holding that a claim for tortious termination is governed by
 15 the personal injury statute of limitations, which is now two years).

16 **II. This Court Need Not Resolve the Proper Characterization of a**
 17 **Section 970 Cause of Action and Applicable Statute of**
 18 **Limitations, Because California's Long-Established Doctrine**
 19 **of Equitable Tolling Applies Where, As Here, Plaintiff Has**
 20 **Several Remedies Available and Pursues Federal**
 21 **Administrative Relief Prior to Her State Suit.**

22 California has long recognized the doctrine of equitable tolling where a Plaintiff
 23 has several available remedies, and chooses to pursue one reasonably and in good faith. See,
 24 generally, Witkin, Cal. Procedure, Actions, §§ 668-669. The California Supreme Court and
 25 Courts of Appeal have repeatedly held that pursuit of Federal or State administrative proceedings
 26 equitably tolls the State statute of limitations. As the Supreme Court stated in Elkins v. Derby,
 27 12 Cal. 3d 410 (1974), California cases have established the principle that

28 "... regardless of whether the exhaustion of one remedy is a prerequisite to
the pursuit of another, if the Defendant is not prejudiced thereby, the running of
 the limitations period is tolled '[w]hen an injured person has several legal
 remedies and, reasonably in good faith, pursues one.'" (Citations omitted)
 (emphasis added) [Id. at 414]

1 Similarly, in Addison v. State of California, 21 Cal. 3d 313, 319 (1978), the Court
 2 applied equitable tolling where the Plaintiffs had filed a Federal lawsuit claiming violation of
 3 civil rights, which was then dismissed, leading to a State lawsuit on the claims. The Court held
 4 the State limitations period was tolled by the Federal action.

5
 6 "As demonstrated by *Bollinger* and *Elkins*, application of the doctrine of
 7 equitable tolling requires timely notice, and lack of prejudice, to the defendant,
 8 and reasonable and good faith conduct on the part of the plaintiff. These elements
 9 seemingly are present here. As noted, the Federal Court, without prejudice,
 10 declined to assert jurisdiction over a timely filed State law cause of action and
 11 plaintiffs thereafter promptly asserted that cause in the proper State Court.
 Unquestionably, the same set of facts may be the basis for claims under both
 Federal and State law. We discern no reason of policy which would require
Plaintiffs to file simultaneously two separate actions based upon the same facts in
both State and Federal Courts, since 'duplicative proceedings are surely
inefficient, awkward and laborious.'" (Citations omitted) (emphasis added)
 [Ibid at 319].

12 The Supreme Court applied the equitable tolling doctrine again in Jones v. Tracy School
 13 District, 27 Cal. 3d 99, 109 (1980). There, the plaintiff first pursued Federal administrative
 14 remedies under the Fair Labor Standards Act for wage discrimination, and then filed a suit under
 15 the California Labor Code. Following Addison and Elkins, the Supreme Court held the two-year
 16 State statute of limitations had been equitably tolled by the prior Federal proceedings. The Court
 17 reversed summary judgment and remanded the case to allow the plaintiff to establish that she had
 18 met the requirements for equitable tolling during the period in which she was pursuing the
 19 alternative Federal remedy.

20 Contrary to Defendants, under the holdings of Elkins and Addison, it matters not whether
 21 the Federal and State remedies are inconsistent, and equitable tolling applies even where the
 22 remedies could have been pursued simultaneously. Nichols v. Canoga Industries, 83 Cal. App.
 23 3d 956, 963-964 (1978).

24 Defendants claim that Plaintiffs' Section 970 claim is not tolled because it is a "separate
 25 and independent" remedy [Defendants' Memorandum at 2:27] cannot avoid application of the 3-
 26 part test under Elkins and Addison. The question whether Plaintiffs' Federal and State claims are
 27 "similar" focuses on whether the prior claim adequately warned the Defendants in the subsequent
 28 claim of the need to prepare a defense. Collier v. City of Pasadena, 142 Cal. App. 3d 917, 925

1 (1983); Garabedian v. Skochko, 232 Cal. App. 3d 836, 846 (1991).

2 In the present case, the major injury alleged in Plaintiffs' Complaint is their termination
3 of employment, and Plaintiffs pursued appropriate efforts to mitigate that injury. Defendants'
4 investigation of the Federal claims would necessarily involve collection of evidence to rebut the
5 State claim; so tolling is fully applicable. Cervantes v. City of San Diego, 5 F.3d 1273, 1277
6 (9th Cir. 1993); Chavira v. Payless shoe Source, 140 F.R.D. 441, 446 (E.D. Cal. 1991).

7 More importantly, Defendants had actual knowledge of Plaintiffs' Section 970 claim by
8 October 31, 2005, so there can be no question that Defendants' investigation encompassed this
9 claim from the very outset.

10 **III. As Shown By the Declaration of Geoffrey V. White, Filed**
11 **Herewith, Plaintiffs Have Met All The Tests For Equitable**
12 **Tolling Here, and Should be Allowed to Amend Their**
Complaint To So Allege.

13 As shown by the facts set forth in the Declaration of Geoffrey V. White, filed
14 herewith, Plaintiffs sent written notice to Defendants of their Section 970 claim within three
15 weeks of their termination from employment. This notice was a detailed recitation of the facts,
16 and included reference to the Section 970 claim. It was followed by additional written
17 communications between Plaintiffs' counsel and Defendants' counsel, specifically discussing the
18 Section 970 claim in November, 2005. Plaintiffs filed a timely EEOC charge in December,
19 2005, and pursued conciliation efforts in good faith under the auspices of the EEOC through
20 November, 2006, when the parties conducted a private mediation before JAMS Mediator Hon.
21 William Cahill (Ret.). That Mediation also included the Section 970 claim. At the Defendants'
22 request, the EEOC then conducted an expanded investigation of the employment practices of
23 Defendants, which has not yet been concluded. Because of the delay in concluding that
24 investigation, Plaintiffs filed their Complaint on the State Court claims on September 27, 2007,
25 in an effort to avoid further delay. Defendants certainly cannot show any prejudice by this joint
26 pursuit of Federal and private conciliation efforts, because they fully participated in these efforts
27 to resolve all claims arising from Plaintiffs' termination of employment, including the Section
28 970 claim.

CONCLUSION

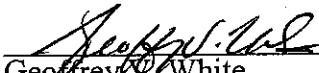
As shown above, the true facts demonstrate that Plaintiffs' efforts to pursue Federal administrative conciliation of their claims against Defendants entitles them to equitable tolling of the State limitations period for their Section 970 claim. Accordingly, Plaintiffs should be given leave to amend to allege these true facts in their Complaint, and Defendants Demurrer should be overruled.

Dated: January 29, 2008

Respectfully submitted.

LAW OFFICE OF GEOFFREY V. WHITE

By:


Geoffrey V. White
Attorney for Plaintiffs

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Law Office of Geoffrey V. White, 351 California Street, San Francisco, CA 94104-2407. On January 29, 2008, I served the within documents:

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO
DEFENDANTS' DEMURRER TO COMPLAINT**

**DECLARATION OF GEOFFREY V. WHITE IN SUPPORT
OF PLAINTIFFS' MEMORANDUM IN OPPOSITION TO
DEFENDANTS' DEMURRER**

**[PROPOSED] ORDER OVERRULING
DEFENDANTS' DEMURRER**

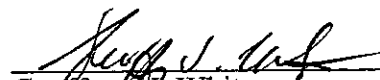
☒ by personally delivering the documents listed above via messenger to the person(s) at the address set forth below.

Michael T. Lucey
Gordon & Rees
275 Battery Street, Suite 2000
San Francisco, CA 94111
Telephone: (415) 986-5900
Facsimile: (415) 986-8054

I am readily familiar with the firm's practice and collection of processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 29, 2008, at San Francisco, California.



Geoffrey V. White

Catherine Molnar and Patricia Shepard v. Stone & Youngberg, et al.
Case No. CGC-07-467639

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

(UNLIMITED JURISDICTION)

CATHERINE MOLNAR and
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TWENTY, inclusive,

Defendants.

Case No. CGC-07-467639

DECLARATION OF GEOFFREY V.
WHITE IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO
DEFENDANTS' DEMURRER

Date: February 11, 2008

Time: 9:30 a.m.

Dept.: 301

I, GEOFFREY V. WHITE, declare as follows:

1. I am an attorney at law, admitted to practice before all the Courts of this State, and the attorney for Plaintiffs herein. I make this Declaration in support of Plaintiffs' Opposition to Defendants' Demurrer, to demonstrate to this Court that Plaintiffs should be allowed to amend their Complaint to allege the following facts to support equitable tolling of Plaintiffs' State law claims against Defendants because of their pursuit of Federal administrative remedies. I have personal knowledge of the matters stated herein, and could and would competently testify thereto

1 if called as a witness.

2 2. Three weeks after Plaintiffs were terminated on or about October 7, 2005, I wrote
3 to Defendant Stone & Youngberg on October 31, 2005 with a detailed recitation of the facts and
4 a demand for settlement. A true copy of that letter is attached hereto as Exhibit 1, although the
5 settlement demand itself has been redacted. As part of that 5-page recitation of facts, we
6 specifically put Defendants on notice that Plaintiffs were claiming damages under Cal. Labor
7 Code Section 970, because of Defendants' allegedly false representations to Plaintiffs, inducing
8 them to move their residence. Exhibit 1 at pages 2-3. We followed up that letter with a fuller
9 discussion of the Section 970 claim in a letter to Defendants' attorneys, dated November 23,
10 2005.

11 3. On or about December 13, 2005, Plaintiffs timely filed a charge of employment
12 discrimination with the Equal Employment Opportunity Commission, alleging several claims of
13 discrimination based on sex and pregnancy, in violation of Title VII of the Civil Rights Act of
14 1964. True and complete copies of these charges are attached hereto as Exhibit 2.

15 4. Shortly after the filing of these EEOC Charges, Defendants agreed to meet
16 privately to discuss settlement of all the claims encompassed by Plaintiffs' demand letter dated
17 October 31, 2005. Representatives of Plaintiffs and Defendants, including Defendant Lockard,
18 along with their attorneys, met on February 2, 2006. The parties were unsuccessful in reaching a
19 settlement, but did agree to pursue private mediation before JAMS.

20 5. During the pendency of that JAMS Mediation, Plaintiffs' counsel also sent written
21 notification of Plaintiffs' claims to Defendant Piazza, and requested his participation in that
22 Mediation, providing him with a complete copy of Plaintiffs' demand letter dated October 31,
23 2005. A true and complete copy of that letter to Defendant Piazza, dated May 23, 2006, is
24 attached hereto as Exhibit 3.

25 6. The parties agreed to hold the Mediation before JAMS Mediator Hon. William J.
26 Cahill (Ret.) and initially scheduled it for May 1, 2006. However, the Mediation was repeatedly
27 delayed by agreement of the parties, to allow additional time for the EEOC to complete its
28 investigation, so that both the State and Federal claims could be addressed in the course of that
**DECLARATION OF GEOFFREY V. WHITE IN SUPPORT OF PLAINTIFFS' MEMORANDUM IN OPPOSITION
TO DEFENDANTS' DEMURRER - CASE NO. CGC-07-467639**

1 Mediation. Because of the lengthy EEOC investigation, scheduled dates for the JAMS
2 Mediation set for June 21, 2006, August 23, 2006, and September 27, 2006 were continued by
3 agreement of the parties.

4 7. On September 18, 2006, the EEOC issued its Determination, finding that
5 Plaintiffs Molnar and Shepard had been discriminated against because of their sex, and subjected
6 to disparate terms and conditions of employment. True and complete copies of the EEOC
7 Determination letters for Plaintiffs are attached hereto as Exhibit 4.

8 8. On November 8, 2006, the parties and their counsel, as well as representatives of
9 the EEOC, participated in a mediation before Mediator Cahill and attempted to resolve all of the
10 issues presented by Plaintiffs' State and Federal claims, including Plaintiffs' claims under Labor
11 Code Section 970. The parties were unable to reach a settlement at that time. At Defendants'
12 request during the Mediation, the EEOC agreed to expand its investigation of the employment
13 practices of Defendants beyond the class originally alleged by Plaintiffs. Pursuant to that
14 agreement, the EEOC withdrew its earlier Determination Letters, pending completion of that
15 expanded investigation. A true copy of the EEOC letter, dated January 25, 2007 is attached
16 hereto as Exhibit 5.

17 9. Plaintiffs filed their Complaint herein on September 27, 2007, because of the
18 lengthy delays in the EEOC's investigation (at Defendants' request) of the expanded class of
19 women employed by Defendants. Plaintiffs filed their Complaint herein in good faith, in order
20 to address the State law issues without further delay, and with the expectation that the EEOC's
21 investigation would be completed within in a short period of time.

22 10. Plaintiffs' counsel has recently been advised by the EEOC that it still has not
23 completed its investigation of the expanded class.

24 //

25 //

26 //

27- //

28 //

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct, and that this Declaration was executed this 29th day of January,
3 2008 in San Francisco, California.

4 LAW OFFICE OF GEOFFREY V. WHITE

5 By:

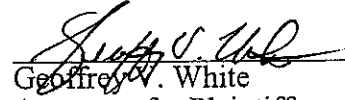

6 Geoffrey V. White
Attorneys for Plaintiffs

EXHIBIT 1

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OF

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SAN FRANCISCO, CALIFORNIA 94104-2407
TEL: (415) 362-5658
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October 31, 2005

HAND-DELIVERED -- CONFIDENTIAL SETTLEMENT COMMUNICATION

Kenneth Williams, President and CEO
Stone & Youngberg LLC
One Ferry Building
San Francisco, CA 94111

Re: Catherine Molnar and Patricia Shepard -- Departure Agreements

Dear Mr. Williams:

This office has been retained to represent Catherine Molnar and Patricia Shepard with respect to their employment claims against Stone & Youngberg, arising from their abrupt termination without cause on or about October 7, 2005.

We have reviewed the proposed "Departure Agreement and Release" proffered to both Ms. Molnar and Ms. Shepard shortly after their termination. Essentially, these Agreements offer to pay each of them (a) a portion of the bonus previously guaranteed to them for 2005, and (b) a part of the remainder of the bonus, now called "additional consideration," in order to obtain a release of all claims against Stone & Youngberg. We believe this severance offer is woefully inadequate, because it not only reneges on the terms of their employment agreements, but also ignores the pattern of discrimination based on sex and/or pregnancy committed by Stone & Youngberg against them.

FACTS

A. Patricia Shepard.

Ms. Shepard was originally promised a position as a Managing Director at Stone & Youngberg (S&Y) with an equity share and guaranteed salary and bonus. However, when funding occurred in July 2004, she was presented with an Offer Letter hiring her as a Principal, without equity. She was told only Managing Directors were entitled to equity. She had previously turned down a better position with Citibank at

Kenneth Williams, CEO
Stone and Youngberg LLC
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Page 2

higher compensation, in reliance on the Managing Director offer. Ms. Shepard complained about this lower position, and was finally made a Managing Director in January 2005, but without equity.

In July 2005, Ms. Shepard left on maternity Leave of Absence, after being told that she had only 6 weeks of disability leave at 60% of pay. She was then pressured to return to work after only 5 weeks.

In September 2005, Ms. Shepard was advised that S & Y Asset Management was being spun off from S & Y. She was assured that her employment with S&Y and S&Y Asset Management would continue until the spin-off at year-end. She was also told that, as one of the "producers" with direct client responsibility, her position would not be eliminated. After purchasing a new home in reliance on these representations, she was told on October 7, 2005 she was terminated without cause. Ms. Shepard was apparently the only producer terminated as part of this spin-off, while virtually all male producers were retained.

We have recently learned that Ms. Shepard's termination was part of an overall pattern of sex discrimination against women in employment, particularly with respect to salary and benefits. With respect to salary, we have evidence that several men with less experience and qualifications than Ms. Shepard were employed as Principals and Managing Directors for S & Y and paid between \$50,000 and \$75,000 per year in total compensation more than she was. Contrary to Management's representations to her, even male Principals and Vice Presidents were given equity shares. With respect to disability leave, we have learned that a man employed by S & Y was recently granted paternity leave with full pay, not the 60% of compensation she received.

B. Catherine Molnar.

Ms. Molnar's treatment was even more egregious. She was hired in October 2004 as a Managing Director of S & Y Asset Management, while she was living in Massachusetts. Management insisted that she sell her family business there, as well as her home. Ms. Molnar commuted for months to California, until approximately April 30, 2005, when her doctor restricted her from flying because of her pregnancy. From May 1, 2005 until June 21, 2005, when she gave birth, she continued to work full-time from home. She commenced a disability leave, continuing to work part-time from home, and received disability benefits at 60% of pay for approximately 3 months until mid-September, 2005, when S & Y stopped paying her without explanation.

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Stone and Youngberg LLC
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Management derided her leave as "vacation", even though she had been working steadily from home. The Departure Agreement confirms this attitude, by proposing to reduce her bonus because of her maternity leave.

At the time she was hired by S & Y, Management promised Ms. Molnar that in return for moving to California, S & Y would make up any loss on the sale of her family business up to \$100,000. Management also promised to guarantee her salary and bonus through December 2005. In September 2005, even while S & Y was actively negotiating to eliminate her job, Management continued to press Ms. Molnar to come back from disability leave, sell her family business and move to California as soon as possible. She was similarly assured she would continue to be employed by S&Y through December 2005, when funding for the spin-off was expected. At Management's behest, Ms. Molnar expedited the sale, thus losing the income that would be generated by the bakery's holiday sales. Two days after she closed the sale, S & Y told her she would be terminated without cause. Management has now advised her it will not honor its contractual obligations to pay for the losses on the sale of her business, and repudiated its guarantee of salary and bonus through December 2005.

Like Ms. Shepard, Ms. Molnar also suffered substantial economic losses from the discriminatory salary and benefits structure of S & Y. Although Ms. Molnar was a Managing Director, she has recently learned that several men at S & Y with equal or less qualifications and experience were paid \$50,000 to \$75,000 more per year in salary and guaranteed bonus than she was. Even the male Principal who reported to her was paid \$25,000/yr. more than she. She also suffered from the same discriminatory policy regarding reduced compensation for maternity leave.

DAMAGES

We think the above evidence is sufficient to prove claims for sex discrimination in salary and benefits with regard to Ms. Shepard and Ms. Molnar, as well as wrongful termination based on sex, pregnancy and/or disability leave. In addition, we believe there is substantial evidence to support a claim by Ms. Molnar for fraudulent inducement to move to California, entitling her and her spouse to double damages under-California Labor Code Section 970. Further, Ms. Molnar and Ms. Shepard have contractual claims for lost salary, bonus and equity under the terms of their Offer Letters.

Kenneth Williams, CEO
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A. Bonus.

Under the Offer Letters, Ms. Shepard was entitled to a guaranteed bonus of \$55,000/yr. through December 2005. Ms. Molnar was guaranteed a bonus of \$60,000/yr. through December 2005. The Departure Agreement repudiates both.

B. Lost Salary.

As indicated above, Ms. Shepard was paid approximately \$50,000 to \$75,000 less per year in total compensation than equal or lesser-qualified males employed by S & Y. Ms. Molnar suffered approximately the same loss of total compensation. In addition, because S & Y has now terminated them, we believe it must also bear responsibility for the salary, bonus and other income both will lose until they can obtain equivalent employment. We expect it will require at least 6 to 12 months for each of them to attain the same level of total compensation they would have earned at S & Y. Their termination stripped them of their client base and destroyed their credibility with clients, so each will have to begin anew.

C. Other Damages.

As you know, if we prevail on Ms. Shepard's and Ms. Molnar's claims of sex and/or disability discrimination, each of them would be entitled to damages under both Federal and State law, including back pay, front pay, liquidated damages, emotional distress damages, potential punitive damages, and attorneys' fees. In an effort to resolve this matter confidentially and expeditiously, our settlement proposal makes no claim for non-economic damages, such as for emotional distress. However, be assured this will be a substantial component of damages should this matter proceed to litigation. Ms. Shepard's abrupt and unexplained termination, coming shortly after her pregnancy and her purchase of a home in reliance on the security of her position, has caused her severe distress, emotional upset and acute embarrassment, not only with respect to co-employees, but especially with her clients and prospective clients, now stripped from her by S & Y. It has caused extreme anxiety regarding her medical coverage for herself and her new family. It has wiped away almost two years of work and relationship building, some of which can never be re-built.

Kenneth Williams, CEO
Stone and Youngberg LLC
October 31, 2005
Page 5

With respect to Ms. Molnar, the emotional distress damages are even more severe. She was maliciously compelled to sell her family business at a loss of approximately \$150,000, including capital and income loss, and her husband has been deprived of future income from the business he worked several years to build. They have also been compelled to sell their home at a substantial loss in order for Ms. Molnar to salvage her career here in California. In addition, Ms. Molnar is still suffering from a serious and potentially life-threatening disability resulting from her pregnancy, so that the loss of medical coverage for herself and her baby has been devastating. Both she and her husband are now without income and unable to afford adequate substitute medical coverage.

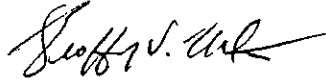
SETTLEMENT DEMAND

L OFFICE OF GEOFFREY V. W.

Kenneth Williams, CEO
Stone and Youngberg LLC
October 31, 2005
Page 6

Please direct all further communications to the undersigned. Thank you for your prompt attention to this matter.

Very truly yours,



Geoffrey V. White

GVW/mc

cc: Catherine Molnar
Patricia Shepard

EXHIBIT 2

EEOC Form 5 (5/01)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☐

FEPA

☒

EEOC

370-2006-00457

California Department Of Fair Employment & Housing

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

Ms. Catherine Molnar

Home Phone No. (Incl Area Code)

Date of Birth

Street Address

City, State and ZIP Code

288 Essex St., S Hamilton, MA 01982

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

No. Employees, Members

Phone No. (Include Area Code)

STONE AND YOUNGBERG, LLP**201 - 500****(415) 445-2300**

Street Address

City, State and ZIP Code

1 Ferry Bldg., San Francisco, CA 94111

Name

No. Employees, Members

Phone No. (Include Area Code)

S AND Y MANAGEMENT

Street Address

City, State and ZIP Code

1 Ferry Bldg., San Francisco, CA 94111

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐

RACE

☐

COLOR

☒

SEX

☐

RELIGION

☐

NATIONAL ORIGIN

☒

RETALIATION

☐

AGE

☒

DISABILITY

☐

OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

10-7-2005☐

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I began working for Respondent on October 18, 2004. My last job title was Managing Director. On or about the last week of February, 2005, I became aware that male Managing Directors at SYAM made substantially more than I did even though they had equal or lesser qualifications and experience. I also learned that more junior males were paid more than I was and had an equity share as part of their compensation. I also learned that the male Principal who reported to me, Frank Sutton, was paid \$25,000/yr. more than I was. In May, 2005, Patricia Shepard and I spoke to Mr. Piazza, Robin Nakao, CFO, and Cherie Larson, Human Resources, about Respondent's maternity leave policy being below the industry standard. In June 21, 2005 until mid-September, 2005, I took a pregnancy-related disability leave which Joe Piazza, President, Stone and Youngberg Asset Management, referred to as a "vacation." In September 2005, I was advised that S & Y Asset Management was being spun off from S & Y. In mid-September, 2005, my disability benefits were terminated without explanation. On October 7, 2005, I was abruptly terminated without cause despite my excellent work performance and was told that my bonus would be reduced because of my disability. During the same spinoff, 1 out of 4 professional women, or 25%, were retained while 7 out of 10 men, or 70 %, were retained. The three women laid off were more qualified and experienced than several of the men retained.

Respondent did not give a reason for its discriminatory actions.

want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

declare under penalty of perjury that the above is true and correct.

NOTARY - When necessary for State and Local Agency Requirements

RECEIVED

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

DEC 19 2005**EEOC-SFDO**

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)

X 12-15-05
Date

X Catherine A. Molnar
Charging Party Signature

EXHIBIT 2

EEOC Form 5 (5/01)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☐

FEPA

☒

EEOC

370-2006-00457

California Department Of Fair Employment & Housing

and EEOC

State or local Agency, if any

THE PARTICULARS ARE (Continued from previous page):

I believe that I have been discriminated against on the basis of my sex, Female, and because of my pregnancy, in violation of Title VII of the Civil Rights Act of 1964, as amended. I also believe that a class of women has been discriminated against in violation of the statute. I also believe that I have been discriminated against in violation of the Americans with Disabilities Act of 1990, as amended. I also believe that I have been retaliated against in violation of the statutes.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

X 12-15-05

Date

X Catherine A. Holman

Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

EEOC Form 5 (5/01)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA☒ EEOC

370-2006-00453

California Department Of Fair Employment & Housing

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

Ms. Patricia Shepard

Home Phone No. (Incl Area Code)

Date of Birth

Street Address

City, State and ZIP Code

19 Underhill Rd., Mill Valley, CA 94941

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

S AND Y ASSET MANAGMENT

No. Employees, Members

201 - 500

Phone No. (Include Area Code)

(415) 445-2300

Street Address

City, State and ZIP Code

1 Ferry Building, San Francisco, CA 94111

Name

S AND Y MANAGEMENT

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

1 Ferry Bldg., San Francisco, CA 94111

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☒ RETALIATION ☐ AGE ☐ DISABILITY ☐ OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

10-7-2005☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I began working for Respondent on July 19, 2004. My last job title was Managing Director. On or about the last week of February, 2005, I became aware that male Managing Directors at SYAM made substantially more than I did even though most had equal or lesser qualifications and experience. I also learned that more junior males were paid more than I was and had an equity share as part of their compensation (which Joe Piazza, President, Stone and Youngberg Asset Management, originally promised me and which I did not receive). In May, 2005, Catherine Molnar and I spoke to Mr. Piazza, Robin Makao, CFO, and Cherie Larson, Human Resources, about Respondent's maternity leave policy being below the industry standard. In August, 2005, I took a maternity Leave of Absence. In September 2005, I was advised that S & Y Asset Management was being spun off from S & Y. On October 7, 2005, I was abruptly terminated without cause despite my excellent work performance. During the same spinoff, 1 out of 4 professional women, or 25%, were retained while 7 out of 10 men, or 70 %, were retained. The three women laid off were more qualified and experienced than several of the men retained.

Respondent did not give a reason for its discriminatory actions.

I believe that I have been discriminated against on the basis of my sex, Female, and because of my pregnancy, in violation of Title VII of the Civil Rights Act of 1964, as amended. I also believe that a class

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and I submit it to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

RECEIVED**DEC 13 2005**SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)**EEOC-SFDO**

12/13/05

Date

Charging Party Signature

EEOC Form 5 (5/01)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☐

FEPA

☒

EEOC

370-2006-00453**California Department Of Fair Employment & Housing**

and EEOC

State or local Agency, if any

THE PARTICULARS ARE (Continued from previous page):

of women has been discriminated against in violation of the statute. I also believe that I have been retaliated against in violation of the statute.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY – When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

12/13/05
Date

Patricia Shepard
Charging Party Signature

EXHIBIT 3

LAW OFFICE

OF

GEOFFREY V. WHITE

351 CALIFORNIA STREET, SUITE 1500
SAN FRANCISCO, CALIFORNIA 94104-2407
TEL: (415) 362-5658
FAX: (415) 362-4115



May 23, 2006

PRIVILEGED SETTLEMENT COMMUNICATION

Joseph J. Piazza
240 Madrona Avenue
Belvedere, CA 94920

Re Shepard & Molnar v. Stone & Youngberg et al.

Dear Mr. Piazza:

As you may be aware, this office has been retained to represent Patricia Shepard and Catherine Molnar regarding their employment claims against Stone & Youngberg and S&Y Asset Management, arising from their abrupt termination without cause on or about October 7, 2005.

Briefly stated, these claims include claims for damages (1) under their employment agreements; (2) for sex discrimination in their wages, benefits and termination; and (3) for fraud in inducing Ms. Molnar to sell her business and move to San Francisco. A more detailed statement is in my letter to S&Y's counsel, dated November 23, 2005, a copy of which is enclosed. The matter is now being investigated by the Equal Employment Opportunity Commission in San Francisco.

Based on certain information provided to us, it appears that Stone & Youngberg may take the position certain of your actions on behalf of S&Y Asset Management were either unauthorized or beyond the scope of your employment. In that event, of course, S&Y may claim no legal obligation to defend or indemnify you, and we may be compelled to seek legal recourse against you personally.

Of course, we would prefer to resolve this matter privately with all responsible parties. S&Y has agreed to private mediation, and we are hopeful the EEOC will also agree to participate. However, S&Y's likely position, as indicated above, may make the mediation unsuccessful without your assistance in clarifying S&Y's instructions, knowledge, or ratification of these actions.

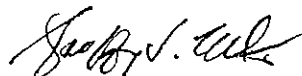
EXHIBIT 3

LA OFFICE OF GEOFFREY V. WHITE

Joseph J. Piazza
May 23, 2006
Page 2

I would appreciate it if you would telephone me, or have your legal counsel telephone me, to discuss this further at your earliest convenience. Thank you.

Very truly yours,



Geoffrey V. White

GVW/mc

Enclosure

cc: (w/o encl.)
Patricia Shepard
Catherine Molner

EXHIBIT 4



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
San Francisco District Office

350 The Embarcadero, Suite 500
San Francisco, CA 94105
(415) 625-5600
TTY (415) 625-5610
FAX (415) 625-5609

Charge Numbers 370-2006-00462 & 370-2006-00457

Catherine Molnar
288 Essex St.
S Hamilton, MA 01982

Charging Party

RECEIVED
SEP 19 2006

S and Y Asset Management
Stone and Youngberg, LLP
1 Ferry Bldg.
San Francisco, CA 94111

Respondent

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the charges filed under Title VII of the Civil Rights Act of 1964. All jurisdictional requirements have been met.

The Charging Party alleges that she was discriminated against based on her sex, Female, when she was subjected to disparate terms and conditions of employment and discharged. The Charging Party also alleges that she was retaliated against for engaging in protected activity when she was discharged.

Respondent denies Charging Party's allegations.

Evidence indicates that Charging Party was discriminated against because of her sex, Female, when she was subjected to disparate terms and conditions of employment. The evidence also indicates that a class of similarly situated female employees were discriminated against because of their sex, Female, when they were subjected to disparate terms and conditions of employment. Evidence also indicates that Charging Party was discharged because of her sex, Female. The evidence also indicates that a class of similarly situated female employees were discharged because of their sex, Female. Evidence also indicates that Charging Party was retaliated against for engaging in protected activity when she was discharged.

Letter of Determination

Page Two

EEOC Charge #s 370-2006-00462 & 370-2006-00457

Based upon the record of evidence, I have determined that there is reasonable cause to believe that Charging Party was discriminated against based on her sex, Female, when she was subjected to disparate terms and conditions of employment. I have also determined that there is reasonable cause to believe a class of similarly situated female employees were discriminated against because of their sex, Female, when they were subjected to disparate terms and conditions of employment. I have also determined that there is reasonable cause to believe that Charging Party was discriminated against based on her sex, Female, when she was discharged. The evidence also indicates that a class of similarly situated female employees were discharged because of their sex, Female. I have also determined that Charging Party was retaliated against for engaging in protected activity when she was discharged.

Based upon the Commission's investigation, the Commission is unable to conclude that the information obtained regarding disability discrimination establishes a violation of the Americans with Disabilities Act of 1990, as amended. This does not certify that the Respondent is in compliance with the statute.


Section 706(b) of Title VII of the Civil Rights Act of 1964, as amended (Title VII), requires that if the Commission determines that there is reasonable cause to believe that a violation has occurred, it shall endeavor to eliminate the alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Having determined that there is reasonable cause to believe that a violation has occurred, the Commission now invites the parties to join with it in a collective effort toward a just resolution of this matter.

A representative of the Commission will contact you in the near future to begin the conciliation process. Disclosure of information obtained by the Commission during the conciliation process will be made only in accordance with Section 706(b) of Title VII and Section 1601.26 of the Commission's Procedural Regulations. When the Respondent declines to enter into settlement discussions, or when the Commission's representative for any other reason is unable to secure a settlement acceptable to the Office Director, the Director shall so inform the parties in writing.

You are reminded that Federal Law prohibits retaliation against persons who have exercised their right to inquire or complain about matters they believe may violate the law. Discrimination against persons who have cooperated in Commission investigations is also prohibited. These protections apply regardless of the Commission's determination on the merits of the charge.

On Behalf of the Commission:

9/18/08
DATE


H. Joan Ehrlich
District Director



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
San Francisco District Office

350 The Embarcadero, Suite 500
San Francisco, CA 94105
(415) 625-5600
TTY (415) 625-5610
FAX (415) 625-5609

Charge Numbers 370-2006-00461 & 370-
2006-00453

Charging Party

RECEIVED

SEP 19 2006

Patricia Shepard
19 Underhill Rd.
Mill Valley, CA 94941

S and Y Asset Management
Stone and Youngberg, LLP
1 Ferry Bldg.
San Francisco, CA 94111

Respondent

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the charges filed under Title VII of the Civil Rights Act of 1964. All jurisdictional requirements have been met.

The Charging Party alleges that she was discriminated against based on her sex, Female, when she was subjected to disparate terms and conditions of employment and discharged. The Charging Party also alleges that she was retaliated against for engaging in protected activity when she was discharged.

Respondent denies Charging Party's allegations.

Evidence indicates that Charging Party was discriminated against because of her sex, Female, when she was subjected to disparate terms and conditions of employment. The evidence also indicates that a class of similarly situated female employees were discriminated against because of their sex, Female, when they were subjected to disparate terms and conditions of employment. Evidence also indicates that Charging Party was discharged because of her sex, Female. The evidence also indicates that a class of similarly situated female employees were discharged because of their sex, Female. Evidence also indicates that Charging Party was retaliated against for engaging in protected activity when she was discharged.

Letter of Determination

Page Two

EEOC Charge #s 370-2006-00461 & 370-2006-00453

Based upon the record of evidence, I have determined that there is reasonable cause to believe that Charging Party was discriminated against based on her sex, Female, when she was subjected to disparate terms and conditions of employment. I have also determined that there is reasonable cause to believe a class of similarly situated female employees were discriminated against because of their sex, Female, when they were subjected to disparate terms and conditions of employment. I have also determined that there is reasonable cause to believe that Charging Party was discriminated against based on her sex, Female, when she was discharged. The evidence also indicates that a class of similarly situated female employees were discharged because of their sex, Female. I have also determined that Charging Party was retaliated against for engaging in protected activity when she was discharged.

Section 706(b) of Title VII of the Civil Rights Act of 1964, as amended (Title VII), requires that if the Commission determines that there is reasonable cause to believe that a violation has occurred, it shall endeavor to eliminate the alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Having determined that there is reasonable cause to believe that a violation has occurred, the Commission now invites the parties to join with it in a collective effort toward a just resolution of this matter.

A representative of the Commission will contact you in the near future to begin the conciliation process. Disclosure of information obtained by the Commission during the conciliation process will be made only in accordance with Section 706(b) of Title VII and Section 1601.26 of the Commission's Procedural Regulations. When the Respondent declines to enter into settlement discussions, or when the Commission's representative for any other reason is unable to secure a settlement acceptable to the Office Director, the Director shall so inform the parties in writing.

You are reminded that Federal Law prohibits retaliation against persons who have exercised their right to inquire or complain about matters they believe may violate the law. Discrimination against persons who have cooperated in Commission investigations is also prohibited. These protections apply regardless of the Commission's determination on the merits of the charge.

On Behalf of the Commission:

9/18/08
DATE

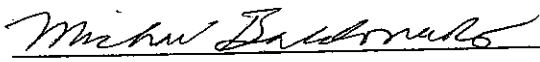

H. Joan Ehrlich
District Director

EXHIBIT 5



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
San Francisco District Office

RECEIVED
FEB - 8 2007


350 The Embarcadero, Suite 500
San Francisco, CA 94105-1260
Tel. (415) 625-5600
Toll Free: (800) 669-4000

Stone and Youngberg, LLP
S and Y Asset Management
c/o Mike Lucey
Gordon & Rees, LLP
275 Battery St., Suite 2000
San Francisco, CA 94111

Re: Patricia Shepard vs. S and Y Asset Management and Stone and Youngberg,
EEOC Charges Nos. 370-2006-00453 and 370-2006-00461
Catherine Molnar vs. S and Y Asset Management and Stone and Youngberg,
EEOC Charge Nos. 370-2006-00462 and 370-2006-00457

Pursuant to the authority vested in the District Director by 29 CFR §1601.21(b) & (d), I am hereby revoking the Letters of Determination previously issued on the above referenced charges and reopening said charges for further investigation.

Dated: 1/25/07


H. Joan Ehrlich, District Director

GEOFFREY V. WHITE (SBN. 068012)
LAW OFFICE OF GEOFFREY V. WHITE
351 California St., Suite 1500
San Francisco, California 94104
Telephone: (415) 362-5658
Facsimile: (415) 362-4115
Email: gvwhite@sprynet.com

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO
(UNLIMITED JURISDICTION)

CATHERINE MOLNAR and
PATRICIA SHEPARD,

Plaintiffs,

v.

S & Y ASSET MANAGEMENT LLC, a
Delaware corporation; **STONE &**
YOUNGBERG, LLC, a California
corporation; **JOSEPH PIAZZA; TOM**
LOCKARD; and DOES ONE through
TWENTY, inclusive,

Defendants.

Case No. CGC-07-467639

[PROPOSED] ORDER OVERRULING
DEFENDANTS' DEMURRER

The Demurrer of Defendants S&Y ASSET MANAGEMENT LLC, STONE & YOUNGBERG LLC, JOSEPH PIAZZA, and TOM LOCKARD to Plaintiffs PATRICIA SHEPARD's and CATHERINE MOLNAR's Complaint came on regularly before this Court for hearing on February 11, 2008, at 9:30 a.m., in Department 301. The Court having read the papers submitted in support of and in opposition to Defendants' motion, and good cause appearing, the Court finds equitable tolling applies and Plaintiffs are given leave to amend to so allege. Defendants' Demurrer is hereby overruled.

Dated: _____

Judge of the Superior Court

[PROPOSED] ORDER OVERRULING DEFENDANTS' DEMURRER

- CASE NO. CGC-07-467639

Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

1 MICHAEL T. LUCEY (SBN: 099927)
MICHAEL A. LAURENSEN (SBN: 190023)
2 MARCIE S. ISOM (SBN: 226906)
GORDON & REES LLP
3 275 Battery Street, Suite 2000
San Francisco, CA 94111
4 Telephone: (415) 986-5900
Facsimile: (415) 986-8054
5

Attorneys for Defendants
6 S&Y MANAGEMENT LLC; STONE & YOUNGBERG, LLC;
JOSEPH PIAZZA; TOM LOCKARD
7

ENDORSED
FILED
Superior Court of California
County of San Francisco

FEB 04 2008

GORDON PARK-LI, Clerk
BY: WESLEY RAMIREZ
Deputy Clerk

8 SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN FRANCISCO
9

10 CATHERINE MOLNAR and PATRICIA
SHEPARD,

11 Plaintiffs,

12 vs.

13 S&Y ASSET MANAGEMENT LLC, *et al.*,

14 Defendants.
15

CASE NO. CGC-07-467639

DEFENDANTS' REPLY BRIEF IN
SUPPORT OF DEMURRER

Date: February 11, 2008

Time: 9:30 a.m.

Dept: 301

BY FAX

16 I. INTRODUCTION

17 Plaintiffs argue that their cause of action for violation of Labor Code section 970 is not
18 untimely because the statute of limitations is either two or three years and/or because they are
19 entitled to equitable tolling during the time they have been pursuing their remedies with the
20 EEOC. However, the cases upon which plaintiffs rely do not support these arguments. The only
21 published cases on the issue hold that the statute of limitations is one year, and equitable tolling
22 has been held not to apply to toll the statute of limitations for an independent harm while a
23 plaintiff pursues an alternative administrative process. Accordingly, defendants' demurrer
24 should be sustained without leave to amend.

25 II. RELEVANT FACTS

26 It is alleged in the Complaint and not disputed that plaintiffs were terminated on October
27 7, 2005, but did not file the instant lawsuit until nearly two years later, on September 27, 2007.
28

1 In opposition, plaintiffs offer by way of attorney declaration, that they wrote a demand
 2 letter to defendants on October 31, 2005, putting them on notice of a claim for violation of Labor
 3 Code section 970, and that they both filed charges with the EEOC in December 2005 which are
 4 still pending. Assuming for the sake of argument that the court may consider these unpled facts
 5 on this motion on the pleadings, they do not serve to revive plaintiffs' untimely claim.

6 **III. ARGUMENT**

7 **A. The Statute of Limitations is One Year**

8 Admittedly, there is a dearth of published authority on this point. Nevertheless, the only
 9 available published authority holds that the proper statute of limitations is the one-year period
 10 provided for liability based on statute, Code of Civil Procedure section 340.¹

11 In *Aguilera v. Pirelli Armstrong Tire Corp.* (9th Cir. 2000) 223 F.3d 1010, 1018, the
 12 Ninth Circuit, citing a California case, *Munoz v. Kaiser Steel Corp.* (1984) 156 Cal.App.3d 965,
 13 980, "assume[d] the correctness of the district court conclusion" that the plaintiffs' "statutory
 14 claim under § 970 ... [was] governed by the one year statute of limitations found in California
 15 Code of Civil Procedure § 340." In *Munoz*, the court wrote of "the one-year statute of
 16 limitations applicable to both [Labor Code] sections 971 and 972 (see Code Civ.Proc., § 340,
 17 subd. (1))" (156 Cal.App.3d at 980.) Plaintiffs make no attempt to dispute or distinguish
 18 these decisions, which are both still good law; they simply ignore them.

19 The cases plaintiffs do cite do not address the statute of limitations. They do, however,
 20 refer to Labor Code section 970 as a "statutory tort cause of action," which would support the
 21 application of Code of Civil Procedure section 340(a) for "[a]n action upon a statute"
 22 (*Burden v. County of Santa Clara* (2000) 81 Cal.App.4th 244, 253 [emphasis added].)

23 Thus, this Court is presented, on the one hand, with cases which hold or assume that the
 24 statute of limitations is one year, and, on the other hand, argument by plaintiffs, which is not

25
 26 ¹ Plaintiffs mistakenly chastise defendants for "fail[ing] to point out to the Court that Cal. Code
 27 Civ. Pro. Section 340(a) was amended in 2002, to enlarge the applicable statute of limitations to
 28 a minimum of 2 years." (Plaintiff's Opposition, 2:8-9.) It was the personal injury statute of
 limitations, now found at section 335.1, that was increased from one to two years in 2002.
 (Stats.2002, c. 448 (S.B.688), § 3.) The limitations period for an action based on statute was one
 year prior to this amendment, and remains one year.

1 supported by any case law, that it should be longer. Clearly, the former is more persuasive, and
 2 this Court should find that the statute of limitations is one year. Therefore, because plaintiffs did
 3 not file the instant lawsuit until almost two years after their terminations, their section 970 claims
 4 are untimely, absent equitable tolling, which, as demonstrated below, does not apply here.

5 **B. Equitable Tolling Does Not Apply Here**

6 Plaintiffs, themselves critical of defendants' reliance on "only one California case from
 7 1984" concerning the statute of limitations, here correctly recite the history of the doctrine of
 8 equitable tolling as it was established by the case law up through 1980. However, more recent
 9 cases make clear that the doctrine has no application here, where a plaintiff is pursuing an
 10 independent, alternative administrative process.

11 In *Mathieu v. Norrell* (2004) 115 Cal.App.4th 1174, the plaintiff sued her former
 12 employer for sexual harassment in violation of the FEHA, and for tortious wrongful termination
 13 in violation of public policy. The defendants were granted summary adjudication on her tort
 14 claim on the ground it was barred by the statute of limitations. The plaintiff argued on appeal
 15 that it was timely based on equitable tolling because she had filed an earlier charge with the
 16 DFEH. The appellate court wrote that "[the plaintiff's] tolling argument is not supported by any
 17 reported California case." (115 Cal.App.4th at 1189.) Following its review of the case law, the
 18 court wrote:

19 Recognizing equitable tolling in the context of concurrent state and
 20 federal administrative proceedings preceding a statutory claim
 21 under the FEHA, however, is far different from permitting a
 22 plaintiff to delay filing a common law tort action because an
 23 alternative administrative process has not yet been completed. We
 24 decline to extend the ruling of [*Downs v. Department of Water &*
Power (1997) 58 Cal.App.4th 1093, 1100] to the current situation,
 as to which its rationale is simply inapplicable. Summary
 adjudication was properly granted as to Mathieu's wrongful
 termination claim.

25 (*Id.* at 1190.) The *Mathieu* court also cited to a case from the Northern District of California,
 26 *Burmeister v. Automatic Data Processing, Inc.* (N.D.Cal. 1999) 1999 WL 111890, which came
 27 to the same result. Indeed, in *Burmeister*, the plaintiff made essentially the same argument in
 28 support of equitable tolling as plaintiffs make in the instant case, arguing that:

[T]he doctrine of "equitable tolling" should toll [her] common law wrongful termination/public policy claim. In particular, she argues that since her wrongful termination claim arises out of the same facts as her FEHA claims it would make no sense for her to file her wrongful termination claim within one year of her termination and then later file her FEHA claim after the administrative process is over and she has been given her right-to-sue notice. She concludes that since her FEHA claim is timely filed her wrongful termination claim should be deemed timely filed as well.

(1999 WL 111890, *1.) The *Burmeister* court "conclude[d] that as a matter of law equitable tolling does not apply here," failing to find, as had *Mathieu*, "any California case which suggests that the California courts would recognize equitable tolling under such circumstances." (*Id.* at *2.)

While both *Mathieu* and *Burmeister* involved tort claims and an administrative charge, there is no reason why the analysis would be any different with plaintiffs' statutory claims for violation of Labor Code section 970. Plaintiffs' pursuit of EEOC remedies for their alleged discriminatory discharge is an "alternative administrative process" which is entirely independent from their "statutory tort" claim that they were fraudulently lured to accept their jobs in the first place.

Even the cases upon which plaintiffs rely require the same outcome. The cases of *Elkins*, *Addison* and *Collier*, all cited by plaintiffs, were collected and summarized in *Downs v. Department of Water & Power* (1997) 58 Cal.App.4th 1093, 1100, where the court then provided a three-factor test to "determine whether the statute of limitations is equitably tolled in a particular case: (1) timely notice to defendants in filing the first claim; (2) lack of prejudice to defendants in gathering evidence to defend against the second claim; and (3) good faith and reasonable conduct by plaintiffs in filing the second claim."

Here, plaintiffs cannot satisfy the first factor, because the only claims that they have "filed"—their EEOC charges—do not provide timely notice to defendants of the facts in support of the Labor Code section 970 claim. They also cannot satisfy the second factor, which "essentially translates to a requirement that the facts of the two claims be identical or at least so similar that the defendant's investigation of the first claim will put him in a position to fairly defend the second." (*Downs*, 58 Cal.App.4th at 1100.) Here, plaintiffs' EEOC charges, which

1 only allege facts related to their discrimination claims, are totally independent from and
 2 unrelated to their claims that they were fraudulently lured to accept their jobs in the first place,
 3 and an investigation of their alleged discriminatory terminations will not put defendants in a
 4 position to fairly defend against their fraud claims, which depend only upon defendants'
 5 knowledge and representations at the time of their hiring.

6 IV. CONCLUSION

7 Because plaintiffs' Labor Code section 970 claims were not filed within the applicable
 8 one-year statute of limitations and are not saved by the doctrine of equitable tolling based on
 9 their pursuit of alternative remedies with the EEOC, defendants' demurrer should be sustained
 10 without leave to amend and plaintiffs' fifth cause of action dismissed from the Complaint.

11 Dated: February 4, 2008

GORDON & REES LLP

By: 

MICHAEL LAURENSEN

Attorneys for Defendants
 S&Y MANAGEMENT LLC; STONE &
 YOUNGBERG, LLC; JOSEPH PIAZZA; TOM
 LOCKARD

Gordon & Rees LLP
 275 Battery Street, Suite 2000
 San Francisco, CA 94111

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon & Rees LLP 275 Battery Street, Suite 2000, San Francisco, CA 94111. On February 4, 2008, I served the within documents:

DEFENDANTS' REPLY BRIEF IN SUPPORT OF DEMURRER

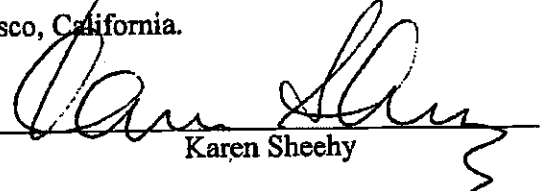
- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☐ by personally delivering the document(s) listed above via Docket Rocket to the person(s) at the address(es) set forth below.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at San Francisco, addressed as set forth below.
- ☒ by placing a true copy thereof enclosed in a sealed envelope, at a station designated for collection and processing of envelopes and packages for overnight delivery by FedEx as part of the ordinary business practices of Gordon & Rees LLP described below, addressed as follows:

Geoffrey V. White
Law Office of Geoffrey V. White
351 California Street, Suite 1500
San Francisco, CA 94104
Telephone: (415) 362-5658
Facsimile: (415) 362-4115

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 4, 2008, at San Francisco, California.


Karen Sheehy

Catherine Molnar and Patricia Shepard v. Stone & Youngberg, et al.
Case No. CGC-07-467639

Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

1 MICHAEL T. LUCEY (SBN: 099927)
 2 MICHAEL A. LAURENSEN (SBN: 190023)
 3 MARCIE S. ISOM (SBN: 226906)
 4 GORDON & REES LLP
 5 275 Battery Street, Suite 2000
 6 San Francisco, CA 94111
 7 Telephone: (415) 986-5900
 8 Facsimile: (415) 986-8054

9 Attorneys for Defendants
 10 S&Y ASSET MANAGEMENT LLC; STONE & YOUNGBERG,
 11 LLC; JOSEPH PIAZZA; TOM LOCKARD

12 SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN FRANCISCO

13 CATHERINE MOLNAR and PATRICIA
 14 SHEPARD,

15 Plaintiffs,

16 vs.

17 S&Y ASSET MANAGEMENT LLC, *et al.*,

18 Defendants.

CASE NO. CGC-07-467639

**[PROPOSED] ORDER SUSTAINING
 DEMURRER**

19 Defendants' Demurrer to Plaintiffs' Fifth Cause of Action for violation of Labor Code
 20 Section 970 came on regularly before this Court for hearing on February 11, 2008, at 9:30 a.m.,
 21 in Department 301. Michael Laurenson appeared for defendants and moving parties. Geoffrey
 22 White appeared for plaintiffs. The Court having read the papers submitted in support of and in
 23 opposition to said motion and having considered the arguments of counsel, and on good cause
 24 appearing therefor,

25 IT IS HEREBY ORDERED that defendants' demurrer is sustained with 10 days leave to
 26 amend to plead facts establishing tolling of the one-year statute of limitations, if plaintiffs can do
 27 so in good faith.

28 Dated: _____, 2008

JUDGE OF THE SUPERIOR COURT

Approved as to Form:

Attorney for Plaintiffs

Page 002 To-GORDON & REES, LLP &

Received Feb-11-08 02:15pm From-

Gordon & Rees

2/11/2008 1:51

PAGE 002/002

Fax Server

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9 Attorneys for Defendants
 10 S&Y ASSET MANAGEMENT LLC; STONE & YOUNGBERG,
 11 LLC; JOSEPH PIAZZA; TOM LOCKARD

12 SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN FRANCISCO

13 CATHERINE MOLNAR and PATRICIA
 14 SHEPARD,

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19 CASE NO. CGC-07-467639

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Dated: _____, 2008

JUDGE OF THE SUPERIOR COURT

Approved as to Form:

Attorney for Plaintiffs

-1-

ORDER SUSTAINING DEMURRER - CASE NO. CGC-07-467639

Gordon & Rees LLP
 275 Battery Street, Suite 2000
 San Francisco, CA 94111

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Michael T. Lucey (99927) Michael A. Laurenson (190023) Gordon & Rees LLP 275 Battery Street, 20th Floor San Francisco, CA 94111 TELEPHONE NO.: (415) 986-5900 FAX NO. (Optional): (415) 986-8054 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Defendants Stone & Younberg, et al.		FOR COURT USE ONLY ENDORSED FILED San Francisco County Superior Court FEB 04 2008 GORDON PARK-LI, Clerk DEBNADETTE THOMPSON Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PETITIONER: Catherine Molnar and Patricia Shepard DEFENDANT/RESPONDENT: Stone & Younberg, et al.		
CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)		
		CASE NUMBER: CGC-07-467639
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: February 29, 2008 Time: 9:00 a.m. Dept.: 212 Div.: Room: Address of court (if different from the address above):		

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

- Party or parties (answer one):
 - ☒ This statement is submitted by party (name): **Defendants Stone & Younberg, et al.**
 - ☐ This statement is submitted jointly by parties (names):
- Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)
 - The complaint was filed on (date):
 - ☐ The cross-complaint, if any, was filed on (date):
- Service (to be answered by plaintiffs and cross-complainants only)
 - ☐ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
 - ☐ The following parties named in the complaint or cross-complaint
 - ☐ have not been served (specify names and explain why not):
 - ☐ have been served but have not appeared and have not been dismissed (specify names):
 - ☐ have had a default entered against them (specify names):
 - ☐ The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
- Description of case
 - Type of case in ☒ complaint ☐ cross-complaint (describe, including causes of action):
Breach of employment contract; gender discrimination

CM-110

PLAINTIFF/PETITIONER: Molnar et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: S & Y Asset Management et al.	CGC-07-467639

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.) Plaintiffs are former financial advisors of Defendant financial services company. Plaintiffs were induced to move their residences by Defendants' false promises, then laid off. Plaintiffs allege their pay and benefits were discriminatory, and that their termination was in breach of contract, in bad faith, violation of public policy, and discriminatory.

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request ☒ a jury trial ☐ a nonjury trial (if more than one party, provide the name of each party requesting a jury trial):

6. Trial date

- a. ☐ The trial has been set for (date):
- b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):
- c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

- a. ☒ days (specify number): 10 days
- b. ☐ hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

- a. Attorney:
- b. Firm:
- c. Address:
- d. Telephone number:
- e. Fax number:
- f. E-mail address:
- g. Party represented:

☐ Additional representation is described in Attachment 8.

9. Preference

☐ This case is entitled to preference (specify code section):

10. Alternative Dispute Resolution (ADR)

- a. Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
- b. ☐ All parties have agreed to a form of ADR. ADR will be completed by (date):
- c. ☒ The case has gone to an ADR process (indicate status): Mediation in November 2006 before JAMS Mediator Hon. William Cahill (Ret.)

PLAINTIFF/PETITIONER: Molnár et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: S & Y Asset Management et al.	CGC-07-467639

10. d. The party or parties are willing to participate in (check all that apply):

- (1) ☒ Mediation
 (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
 (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
 (4) ☐ Binding judicial arbitration
 (5) ☐ Binding private arbitration
 (6) ☐ Neutral case evaluation
 (7) ☐ Other (specify):

- e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
 f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
 g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

11. Settlement conference

- ☒ The party or parties are willing to participate in an early settlement conference (specify when):

12. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (name):
 b. Reservation of rights: ☐ Yes ☐ No
 c. ☐ Coverage issues will significantly affect resolution of this case (explain):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

- ☐ Bankruptcy ☒ Other (specify): pending EEOC investigation;
 Status: Expecting Right-to-Sue letter after determination.

14. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
 (1) Name of case:
 (2) Name of court:
 (3) Case number:
 (4) Status:
☐ Additional cases are described in Attachment 14a.
 b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

15. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

- ☐ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):

CM-110

PLAINTIFF/PETITIONER: Molnar et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: S & Y Asset Management et al.	CGC-07-467639

17. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (describe all anticipated discovery):

Party	Description	Date
Plaintiffs	Requests for Production	May 2008
Plaintiffs	Defendants' Depositions	July 2008
Plaintiffs	Expert Discovery	November 2008

- c. ☐ The following discovery issues are anticipated (specify):

18. Economic Litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

19. Other issues

- ☒ The party or parties request that the following additional matters be considered or determined at the case management conference (specify): Plaintiffs will amend to add statutory claims for employment discriminations after EEOC investigation is concluded.

20. Meet and confer

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

21. Case management orders

Previous case management orders in this case are (check one): ☒ none ☐ attached as Attachment 21.

22. Total number of pages attached (if any): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: February 5, 2008

Geoffrey V. White

(TYPE OR PRINT NAME)

▶  (SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

▶ _____ (SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Law Office of Geoffrey V. White, 351 California Street, San Francisco, CA 94104-2407. On February 5, 2008, I served the within documents:

CASE MANAGEMENT STATEMENT

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail in the State of California at San Francisco, addressed as set forth below.

Michael T. Lucey
Gordon & Rees
275 Battery Street, Suite 2000
San Francisco, CA 94111
Telephone: (415) 986-5900
Facsimile: (415) 986-8054

I am readily familiar with the firm's practice and collection of processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 5, 2008, at San Francisco, California.



Maxine Clamage

Catherine Molnar and Patricia Shepard v. Stone & Youngberg, et al.
Case No. CGC-07-467639

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

400 MCALLISTER STREET, SAN FRANCISCO, CA 94102

CATHERINE MOLNAR et al

PLAINTIFF (S)

VS.

S & Y ASSET MANAGEMENT LLC, A
DELAWARE CORPORATION et al

DEFENDANT (S)

**Pretrial Department 212
Case Management Order**

NO. CGC-07-467639

**Order Continuing Case
Management Conference**

TO: ALL COUNSEL AND PARTIES IN PROPRIA PERSONA

The FEB-29-2008 CASE MANAGEMENT CONFERENCE is canceled, and it is hereby ordered:

This case is set for a case management conference on APR-11-2008 in Department 212 at 9:00 AM.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than fifteen (15) days before the case management conference. However, it would facilitate the issuance of a case management order without an appearance at the case management conference if the case management statement is filed, served and lodged in Department 212 twenty-five (25) days before the case management conference.

PLAINTIFF'S COUNSEL OR PLAINTIFF(S) IN PROPRIA PERSONA must send a copy of this notice to all parties not listed on the attached proof of service within five (5) days of the date of this order.

DATED: FEB-20-2008

ARLENE T. BORICK

JUDGE/COMMISSIONER

1 MICHAEL T. LUCEY (SBN: 099927)
 2 MICHAEL A. LAURENSEN (SBN: 190023)
 3 MARCIE S. ISOM (SBN: 226906)
 4 GORDON & REES LLP
 5 275 Battery Street, Suite 2000
 6 San Francisco, CA 94111
 7 Telephone: (415) 986-5900
 8 Facsimile: (415) 986-8054

ENDORSED
 FILED
 San Francisco County Superior Court

FEB 27 2008

GORDON PARK-LI, Clerk
 BY: AUDREY HUIE
 Deputy Clerk

Attorneys for Defendants
 S&Y ASSET MANAGEMENT LLC; STONE & YOUNGBERG,
 LLC; JOSEPH PIAZZA; TOM LOCKARD

SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN FRANCISCO

CATHERINE MOLNAR and PATRICIA
 SHEPARD,

Plaintiffs,

vs.

S&Y ASSET MANAGEMENT LLC, *et al.*,

Defendants.

CASE NO. CGC-07-467639

**[PROPOSED] ORDER SUSTAINING
 DEMURRER**

Defendants' Demurrer to Plaintiffs' Fifth Cause of Action for violation of Labor Code
 Section 970 came on regularly before this Court for hearing on February 11, 2008, at 9:30 a.m.,
 in Department 301. Michael Laurenson appeared for defendants and moving parties. Geoffrey
 White appeared for plaintiffs. The Court having read the papers submitted in support of and in
 opposition to said motion and having considered the arguments of counsel, and on good cause
 appearing therefor,

IT IS HEREBY ORDERED that defendants' demurrer is sustained with 10 days leave to
 amend to plead facts establishing tolling of the one-year statute of limitations, if plaintiffs can do
 so in good faith.

Dated: FEB 26 2008, 2008

PETER J. BUSCH

JUDGE OF THE SUPERIOR COURT
PETER J. BUSCH

Approved as to Form:

SEE EXHIBIT "A" RE

COMPLIANCE WITH CRC 3.1312
 Attorney for Plaintiffs

Page 002 To: GORDON & REES, LLP 4

Received Feb-11-08 02:15pm From-

Gordon & Rees

2/11/2008 1:51

PAGE 002/002

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9 Attorneys for Defendants
 10 S&Y ASSET MANAGEMENT LLC; STONE & YOUNGBERG,
 11 LLC; JOSEPH PIAZZA; TOM LOCKARD

8 SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN FRANCISCO

10 CATHERINE MOLNAR and PATRICIA
 11 SHEPARD,

12 Plaintiffs,

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CASE NO. CGC-07-467639

(PROPOSED) ORDER SUSTAINING
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 23 amend to plead facts establishing tolling of the one-year statute of limitations, if plaintiffs can do
 24 so in good faith.

25 Dated: _____, 2008

JUDGE OF THE SUPERIOR COURT

26 Approved as to Form:

27 
 28 Attorney for Plaintiffs

EXHIBIT "A"

-1-

ORDER SUSTAINING DEMURRER - CASE NO. CGC-07-467639

Gordon & Rees LLP
 275 Battery Street, Suite 2000
 San Francisco, CA 94111

1 MICHAEL T. LUCEY (SBN: 099927)
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9 Attorneys for Defendants
 10 S&Y ASSET MANAGEMENT LLC;
 11 STONE & YOUNGBERG, LLC;
 12 JOSEPH PIAZZA; TOM LOCKARD

ENDORSED
 FILED
 Superior Court of California
 County of San Francisco

MAR 04 2008

GORDON PARK-LI, Clerk

BY: _____
 Deputy Clerk

9 SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN FRANCISCO

11 CATHERINE MOLNAR and PATRICIA
 12 SHEPARD,

13 Plaintiffs,

14 vs.

15 S&Y ASSET MANAGEMENT LLC, *et al.*,

16 Defendants.

CASE NO. CGC07-467639

NOTICE OF ENTRY OF ORDER


BY FAX

18 TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

19 PLEASE TAKE NOTICE that the Court entered the attached Order on February 27,
 20 2008.

21 Dated: March 3, 2008

GORDON & REES, LLP

22 By: 
 23 MICHAEL A. LAURENSEN
 24 Attorneys for Defendants
 25 S&Y ASSET MANAGEMENT LLC; STONE &
 26 YOUNGBERG, LLC; JOSEPH PIAZZA; TOM
 27 LOCKARD
 28

Gordon & Rees LLP
 275 Battery Street, Suite 2000
 San Francisco, CA 94111

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5
6 Attorneys for Defendants
S&Y ASSET MANAGEMENT LLC;
STONE & YOUNGBERG, LLC;
7 JOSEPH PIAZZA; TOM LOCKARD

8
9 SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN FRANCISCO

10
11 CATHERINE MOLNAR and PATRICIA
SHEPARD,

12 Plaintiffs,

13 vs.

14 S&Y ASSET MANAGEMENT LLC, *et al.*,

15 Defendants.
16

CASE NO. CGC07-467639

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NOTICE OF ENTRY OF ORDER

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the Court entered the attached Order on February 27,
2008.

Dated: March 3, 2008

GORDON & REES, LLP

By: 

MICHAEL A. LAURENSEN

Attorneys for Defendants

S&Y ASSET MANAGEMENT LLC; STONE &
YOUNGBERG, LLC; JOSEPH PIAZZA; TOM
LOCKARD

1 MICHAEL T. LUCEY (SBN: 099927)
 2 MICHAEL A. LAURENSEN (SBN: 190023)
 3 MARCIE S. ISOM (SBN: 226906)
 4 GORDON & REES LLP
 5 275 Battery Street, Suite 2000
 6 San Francisco, CA 94111
 7 Telephone: (415) 986-5900
 8 Facsimile: (415) 986-8054

ENDORSED
 FILED
 San Francisco County Superior Court

FEB 27 2003

GORDON PARK-LI, Clerk
 BY: AUDREY HUIE
 Deputy Clerk

Attorneys for Defendants
 S&Y ASSET MANAGEMENT LLC; STONE & YOUNGBERG,
 LLC; JOSEPH PIAZZA; TOM LOCKARD

SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN FRANCISCO

CATHERINE MOLNAR and PATRICIA
 SHEPARD,

Plaintiffs,

vs.

S&Y ASSET MANAGEMENT LLC, *et al.*,

Defendants.

CASE NO. CGC-07-467639

~~PROPOSED~~ ORDER SUSTAINING
 DEMURRER

Defendants' Demurrer to Plaintiffs' Fifth Cause of Action for violation of Labor Code
 Section 970 came on regularly before this Court for hearing on February 11, 2008, at 9:30 a.m.,
 in Department 301. Michael Laurenson appeared for defendants and moving parties. Geoffrey
 White appeared for plaintiffs. The Court having read the papers submitted in support of and in
 opposition to said motion and having considered the arguments of counsel, and on good cause
 appearing therefor,

IT IS HEREBY ORDERED that defendants' demurrer is sustained with 10 days leave to
 amend to plead facts establishing tolling of the one-year statute of limitations, if plaintiffs can do
 so in good faith.

Dated: FEB 26 2008, 2008

PETER J. BUSCH
 JUDGE OF THE SUPERIOR COURT
PETER J. BUSCH

Approved as to Form:

SEE EXHIBIT "A" RE
 COMPLIANCE WITH CRC 3.1312
 Attorney for Plaintiffs

200 Page 002 4 JTL-GORDON & REES, LLP

Received Feb-11-08 02:15pm From-

Gordon & Rees

2/11/2008 1:51

PAGE 002/002

Fax Server

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9 Attorneys for Defendants
 10 S&Y ASSET MANAGEMENT LLC; STONE & YOUNGBERG,
 11 LLC; JOSEPH PIAZZA; TOM LOCKARD

12 SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN FRANCISCO

13 CATHERINE MOLNAR and PATRICIA
 14 SHEPARD,

15 Plaintiffs,

16 vs.

17 S&Y ASSET MANAGEMENT LLC, *et al.*,

18 Defendants.

CASE NO. CGC-07-467639

[PROPOSED] ORDER SUSTAINING
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 26 amend to plead facts establishing tolling of the one-year statute of limitations, if plaintiffs can do
 27 so in good faith.

28 Dated: _____, 2008

JUDGE OF THE SUPERIOR COURT

Approved as to Form:


 Attorney for Plaintiffs

EXHIBIT "A"

-1-

ORDER SUSTAINING DEMURRER - CASE NO. CGC-07-467639

Gordon & Rees LLP
 275 Battery Street, Suite 2000
 San Francisco, CA 94111

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon & Rees LLP 275 Battery Street, Suite 2000, San Francisco, CA 94111. On March 3, 2008, I served the within documents:

NOTICE OF ENTRY OF ORDER

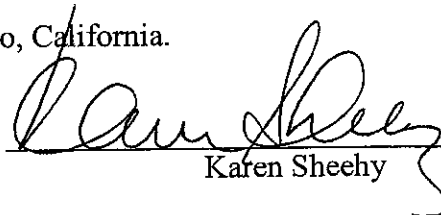
- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☐ by personally delivering the document(s) listed above via Docket Rocket to the person(s) at the address(es) set forth below.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at San Francisco, addressed as set forth below.
- ☐ by placing a true copy thereof enclosed in a sealed envelope, at a station designated for collection and processing of envelopes and packages for overnight delivery by FedEx as part of the ordinary business practices of Gordon & Rees LLP described below, addressed as follows:

Geoffrey V. White
Law Office of Geoffrey V. White
351 California Street, Suite 1500
San Francisco, CA 94104
Telephone: (415) 362-5658
Facsimile: (415) 362-4115

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 3, 2008, at San Francisco, California.


Karen Sheehy

Catherine Molnar and Patricia Shepard v. Stone & Youngberg, et al.
San Francisco County Superior Court, Case No. CGC-07-467639

Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

- Page 1 of 4

PLAINTIFF/PETITIONER: Molnar et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: S & Y Asset Management et al.	CGC-07-467639

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)
- Plaintiffs are former financial advisors of Defendant financial services company. Plaintiffs were induced to move their residences by Defendants' false promises, then laid off. Plaintiffs allege their pay and benefits were discriminatory, and that their termination was in breach of contract, in bad faith, violation of public policy, and discriminatory.

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. **Jury or nonjury trial**

The party or parties request ☒ a jury trial ☐ a nonjury trial (if more than one party, provide the name of each party requesting a jury trial):

6. **Trial date**

- a. ☐ The trial has been set for (date):
- b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):
- c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. **Estimated length of trial**

The party or parties estimate that the trial will take (check one):

- a. ☒ days (specify number): 10 days
- b. ☐ hours (short causes) (specify):

8. **Trial representation (to be answered for each party)**

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

- a. Attorney:
- b. Firm:
- c. Address:
- d. Telephone number:
- e. Fax number:
- f. E-mail address:
- g. Party represented:

☐ Additional representation is described in Attachment 8.

9. **Preference**

☐ This case is entitled to preference (specify code section):

10. **Alternative Dispute Resolution (ADR)**

- a. Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
- b. ☐ All parties have agreed to a form of ADR. ADR will be completed by (date):
- c. ☒ The case has gone to an ADR process (indicate status): Mediation in November 2006 before JAMS Mediator Hon. William Cahill (Ret.)

PLAINTIFF/PETITIONER: Molnar et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: S & Y Asset Management et al.	CGC-07-467639

10. d. The party or parties are willing to participate in (check all that apply):

- (1) ☒ Mediation
 (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
 (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
 (4) ☐ Binding judicial arbitration
 (5) ☐ Binding private arbitration
 (6) ☐ Neutral case evaluation
 (7) ☐ Other (specify):

- e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
 f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
 g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

11. Settlement conference

☒ The party or parties are willing to participate in an early settlement conference (specify when):

12. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (name):
 b. Reservation of rights: ☐ Yes ☐ No
 c. ☐ Coverage issues will significantly affect resolution of this case (explain):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

☐ Bankruptcy ☒ Other (specify): pending EEOC investigation;

Status: Expecting right-to-sue letter after determination; Defendants now requested further investigation by EEOC in approximately 30 days.

14. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
 (1) Name of case:
 (2) Name of court:
 (3) Case number:
 (4) Status:
☐ Additional cases are described in Attachment 14a.
 b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

15. Bifurcation

☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

☐ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):

PLAINTIFF/PETITIONER: Molnar et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: S & Y Asset Management et al.	CGC-07-467639

17. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (describe all anticipated discovery):

<u>Party</u>	<u>Description</u>	<u>Date</u>
Plaintiffs	Request for Production	June 2008
Plaintiffs	Defendants' Depositions	August 2008
Plaintiffs	Expert Discovery	December 2008

- c. ☐ The following discovery issues are anticipated (specify):

18. Economic Litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

19. Other issues

- ☒ The party or parties request that the following additional matters be considered or determined at the case management conference (specify): Plaintiffs will amend to statutory claims for employment discrimination after EEOC investigation is concluded.

20. Meet and confer

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

21. Case management orders

Previous case management orders in this case are (check one): ☒ none ☐ attached as Attachment 21.

22. Total number of pages attached (if any): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: March 25, 2008

Geoffrey V. White

(TYPE OR PRINT NAME)

▶ 
(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Law Office of Geoffrey V. White, 351 California Street, San Francisco, CA 94104-2407. On March 25, 2008, I served the within documents:

CASE MANAGEMENT STATEMENT

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail in the State of California at San Francisco, addressed as set forth below.

Michael T. Lucey
Gordon & Rees
275 Battery Street, Suite 2000
San Francisco, CA 94111
Telephone: (415) 986-5900
Facsimile: (415) 986-8054

I am readily familiar with the firm's practice and collection of processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 25, 2008, at San Francisco, California.


Maxine Clamage

Catherine Molnar and Patricia Shepard v. Stone & Youngberg, et al.
Case No. CGC-07-467639